

## State of California

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### **Legislative Change No.**

**04-09**

Bill Number: SB 1100

Author: Senate Budget & Fiscal Chapter Number: 04-226

Laws Affecting Franchise Tax Board: Public Resources Code Section 37022.

Revenue and Taxation Code Sections 17052.2, 17053.30,  
19164, 19590, 19591, 19592, 19730, 19731, 19732, 19733,  
19734, 19735, 19736, 19737, 19738, 19777.5, and 23630.

Date Filed with the Secretary of the State: August 16, 2004

**SUBJECT:** Franchise Tax Board Tax Amnesty/Teacher Retention Credit Suspension/Natural Heritage Preservation Tax Credit/Franchise Tax Board Proposed Fees For Services

**Senate Bill 1100 (Senate Budget and Fiscal Review), made the following changes to California law:**

Section 37022 of the Public Resources Code is amended.

This act extends the period in which the Natural Heritage Preservation tax credits may be awarded from ending in fiscal year 2004/2005 to ending in 2007/2008.

This act specifies that tax credits may be awarded between July 1, 2002, and June 30, 2005, only if the amount of all lost revenue resulting from the credit is reimbursed by transfer to the General Fund. Without reimbursement to the General Fund, the credits may not be awarded until July 1, 2005.

Section 17052.2 of the Revenue and Taxation Code is amended.

This act suspends the Teacher Retention Credit for taxable years 2004 and 2005.

Section 17053.30 of the Revenue and Taxation Code is amended.

This act extends the end of the period in which the Natural Heritage Preservation tax credits may be claimed from December 31, 2005, to June 30, 2008.

Section 19164 of the Revenue and Taxation Code is amended.

This act provides an increase in the current accuracy-related penalty for a taxable year that would be eligible for amnesty from 20% to 40% of the understatement for any assessment issued after the close of amnesty. The increased penalty does not apply to any taxable year of a taxpayer in audit, protest, appeal, settlement, or litigation as of the start of the amnesty period. In addition, the increased accuracy-related penalty does not apply to understatements relating to tax shelter items.

Bureau Director

Date

Jana Howard (for JBP)

9/17/2004

**This act adds Article 4 (commencing with Section 19590) to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.**

Section 19590 is added to the Revenue and Taxation Code.

This act provides a legislative declaration that service fees should be imposed upon specialized taxpayer services in order to recover the full costs of administering and providing those services.

Section 19591 is added to the Revenue and Taxation Code.

This act requires the Franchise Tax Board (FTB) to charge fees for providing the following specialized tax services:

- installment payment programs,
- expedited corporation revivor requests,
- expedited tax clearance certificate requests, and
- expedited tax-exempt status requests.

This act specifies that prior to January 1, 2006, FTB shall publish by notice a schedule of specialized tax service fees to be imposed. After January 1, 2006, the amount of the fees shall be established through regulations. This act states that the amount of the fees shall be established in the manner and in the amounts necessary to reimburse FTB for the costs of administering the specialized services.

Section 19592 is added to the Revenue and Taxation Code.

This act specifies that all fees collected for services provided by FTB shall be used as reimbursement of FTB's costs.

**In addition, this act adds Chapter 9.1 (commencing with Section 19730) to Part 10.2 of Division 2 of the Revenue and Taxation Code.**

Section 19730 is added to the Revenue and Taxation Code.

This act requires FTB to administer an amnesty program for taxpayers subject to the personal income tax (PIT) laws and corporation tax laws.

Section 19731 is added to the Revenue and Taxation Code.

This act provides that the amnesty program timeframe is February 1, 2005 - March 31, 2005, or during a two-month timeframe ending no later than June 30, 2005. The amnesty program applies to tax liabilities for taxable years beginning prior to January 1, 2003 (2002 taxable year and older).

Section 19732 is added to the Revenue and Taxation Code.

This act provides FTB the authority to waive unpaid penalties and fees imposed under Part 10.2 of the Revenue and Taxation Code to the extent that the penalty or fee is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for taxable years 2002 and older.

In addition, this act provides the following:

- No criminal action shall be brought against a taxpayer for the taxable years for which tax amnesty is allowed.
- Taxpayers under criminal investigation or criminal prosecution are excluded from participating in amnesty. In addition, those taxpayers eligible for either the state or federal abusive tax shelter voluntary compliance initiatives are excluded from participating in amnesty for items and amounts that would have been eligible under the initiatives. However, those same taxpayers are eligible for amnesty for items and amounts that are not related to abusive tax shelters.
- No credits or refunds will be allowed on penalty or fee amounts paid prior to submission of a request for amnesty.
- A taxpayer that takes advantage of amnesty waives all rights to file a claim for refund or credit for amounts paid in connection with amnesty.

Section 19733 is added to the Revenue and Taxation Code.

This act provides the following parameters for the amnesty program.

- A taxpayer eligible to participate in amnesty must file a completed amnesty application signed under penalty of perjury by March 31, 2005.
- Within 60 days of the conclusion of the amnesty program those taxpayers participating in amnesty that are underreporters are required to file an amended return and nonfilers are required to file a tax return.
- All taxpayers are required to pay tax and interest under the amnesty program. Payment in full is required within 60 days of the conclusion of the amnesty period or an installment agreement must be initiated with final payment due by June 30, 2006.
- A taxpayer that defaults on an installment agreement entered under amnesty will have their amnesty status revoked and the total amount of tax, interest, fees, and all penalties will be immediately due and payable.
- In the event FTB issues a correction notice to the taxpayer as a result of an amnesty application, this act allows the taxpayer 15 days from the date of the notice to pay the amount reflected on the correction notice and the payment is still considered a payment made within the amnesty period.
- A taxpayer under federal bankruptcy court protection can participate in amnesty if a court order is obtained from the federal bankruptcy court with jurisdiction over the taxpayer's case approving the taxpayer's participation, and the approved plan is submitted to FTB with the application to participate in the amnesty program.
- The application for amnesty will be in a form and manner specified by FTB, but in no case will a mere payment of any taxes and interest due, in whole or in part, constitute an acceptable

amnesty application. In addition, the application of a tax refund from one tax year to an amnesty eligible tax year does not constitute an acceptable amnesty application.

- The Legislature intends for FTB to make the amnesty application process as streamlined as possible to ensure participation in the amnesty program by as many taxpayers as possible without compromising FTB's ability to enforce and collect PIT and corporation taxes.
- FTB is allowed to issue deficiency assessments and initiate criminal action post-amnesty for taxable years eligible for amnesty. However, the penalties can only be assessed and criminal action can only be initiated on the additional assessment amount and not any amount self-assessed and paid during amnesty.

Section 19734 is added to the Revenue and Taxation Code.

This act provides that no interest will be allowed if any overpayment of tax shown on an original or amended tax return filed during amnesty is refunded or credited within 180 days after the return is filed.

Section 19735 is added to the Revenue and Taxation Code.

This act provides that FTB may issue forms, instructions, notices, rules, or guidelines and take any necessary action needed to implement the amnesty program, including specifying the form and manner of any acceptable form of amnesty application.

In addition, this act provides that the provisions of the Administrative Procedures Act do not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by FTB for the amnesty program.

Section 19736 is added to the Revenue and Taxation Code.

This act requires FTB to conduct a public outreach program and adequately publicize the tax amnesty program and the new and increased penalties associated with taxpayer failure to participate in the tax amnesty program.

In addition, this act requires FTB to make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, send written notice to taxpayers of their eligibility for tax amnesty. However, the failure of FTB to notify a taxpayer of the existence or correct amount of a tax liability eligible for amnesty does not 1) preclude the taxpayer from participating in the tax amnesty program, nor 2) constitute grounds to abate the amnesty penalty imposed under Section 19777.5.

Section 19737 is added to the Revenue and Taxation Code.

This act provides that any taxpayer that participates in amnesty and subsequently fails to pay any amount of tax, penalties, fees, or other amounts for the 2005 or 2006 taxable year, where that failure results in the imposition of a collection fee, will have the previous amnesty penalty and fee waiver rendered null and void. All penalties, fees, and associated interest previously waived during the amnesty program will be immediately due and payable.

In addition, this act provides the following:

- A taxpayer that takes advantage of amnesty waives all rights to file a claim for refund or credit for amounts paid in connection with this section.
- The provisions of the Revenue and Taxation Code relating to deficiency assessments do not apply with respect to the assessment or collection of any penalty, fee, or interest imposed under this section.

Section 19738 is added to the Revenue and Taxation Code.

This act provides that any taxpayer who has an existing installment agreement with FTB as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the amnesty penalty under Section 19777.5.

Section 19777.5 is added to the Revenue and Taxation Code.

This act creates two new mandatory amnesty “penalties” equal to 1) 50% of the existing unpaid interest amount on any tax year for a taxpayer that failed to take advantage of amnesty, and 2) 50% of the unpaid interest subsequently assessed on deficiency amounts (including final deficiencies and self-assessed amounts) where the taxpayer could have but failed to take part in amnesty.

In addition, this act provides the following:

- This penalty is in addition to any other penalty imposed under Part 10, Part 10.2, or Part 11.
- The provisions of the Revenue and Taxation Code relating to deficiency assessments do not apply with respect to the assessment or collection of this penalty.
- Amnesty participants can file returns and submit payment(s) within the 60-day extension period, while still avoiding the new 50% end of amnesty penalty that applies to amounts not actually paid during the tax amnesty period.
- In addition, the new 50% amnesty penalty does not apply to a taxpayer that 1) initiates and is compliant with an installment agreement to pay amounts due under the amnesty program, or 2) pays in full the taxes and interest due within 15 days of receiving notification from FTB of a math error or interest computation correction.
- A taxpayer that takes advantage of amnesty waives all rights to file a claim for refund or credit for amounts paid in connection with this penalty.

Section 23630 of the Revenue and Taxation Code is amended.

This act extends the end of the period in which the Natural Heritage Preservation tax credits may be claimed from December 31, 2005, to June 30, 2008.

As an urgency statute this act is effective immediately upon enactment, August 16, 2004.

- For purposes of the Natural Heritage Preservation tax credit, the operative date would be extended to include contributions made no later than June 30, 2008.
- For purposes of the Teacher Retention Credit, the suspension would be operative for the 2004 and 2005 taxable years.
- For purposes of the fees for FTB services, the operative date would be the same as the effective date and apply to services provided on or after that date.
- For purposes of the amnesty program, the operative date would apply to taxable years beginning before January 1, 2003, only, and the amnesty program period would commence February 1, 2005.

This act will not require any reports by the department to the Legislature.